

ATTACHMENT 39

HIGHLY CONFIDENTIAL

Marshall, Gregory Dean

March 18, 2014

1

IN THE DISTRICT COURT OF WAYNDOTTE COUNTY,

KANSAS

TWENTY-NINTH JUDICIAL DISTRICT

ASSOCIATED WHOLESALE GROCERS,

INC., et al.,

Plaintiffs,

Case No.

V.

10CV2171

UNITED EGG PRODUCERS, et al.,

HIGHLY

Defendants.

CONFIDENTIAL

Volume I

Washington, D.C.

March 18, 2014

The deposition of GREGORY DEAN

MARSHALL was convened on Tuesday, March 18,
2014, commencing at 4:27 a.m., at the offices of
Porter Wright, 1900 K Street, Northwest
Washington, D.C., before Paula G. Satkin,
Registered Professional Reporter and Notary
Public.

Henderson Legal Services, Inc.

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Marshall, Gregory Dean

March 18, 2014

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiffs:</p> <p>4 PATRICK J. STUEVE, ESQ.</p> <p>5 DAVID A. HICKEY, ESQ.</p> <p>6 Stueve Siegel Hanson LLP</p> <p>7 460 Nichols Road, Suite 200</p> <p>8 Kansas City, Missouri 64112</p> <p>9 (816) 714-7100</p> <p>10</p> <p>11 On behalf of Rose Acre Farms:</p> <p>12 JOHN C. MONICA, JR., ESQ.</p> <p>13 MOLLY CRABTREE, ESQ.</p> <p>14 Porter, Wright, Morris & Arthur LLP</p> <p>15 1900 K Street, NW</p> <p>16 Suite 1110</p> <p>17 Washington, DC 20006</p> <p>18 (202) 778-3000</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">4</p> <p>1 EXAMINATION</p> <p>2 By Mr. Stueve 7</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit No. Page No.</p> <p>9 Exhibit 596 (Previously Marked) 9</p> <p>10 Exhibit 597 Document Bates stamped 13</p> <p>11 RAFKS 0009762</p> <p>12 Exhibit 598 Consolidated Financial Statement 17</p> <p>13 12/99</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 ALSO PRESENT:</p> <p>4 JOSEPH A. MILLER</p> <p>5 General Counsel, Rose Acre Farms, Inc.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This is media</p> <p>3 unit number one of the videotaped deposition of</p> <p>4 Mr. Greg Marshall on behalf of Rose Acre Farms,</p> <p>5 Incorporated in the matter of Associated</p> <p>6 Wholesale Grocers, Incorporated, et al.</p> <p>7 Plaintiffs versus United Egg Producers, et al.,</p> <p>8 Defendants in the District Court of Wayndotte</p> <p>9 County, Kansas, 29th Judicial District, Case</p> <p>10 Number 10CV2171.</p> <p>11 This deposition is being held at</p> <p>12 Porter Wright Morris & Arthur LLP located at</p> <p>13 1900 K Street, Northwest, Washington, D.C. on</p> <p>14 March 18, 2014 at approximately 4:28 p.m.</p> <p>15 My name is Steve Decanio from the</p> <p>16 firm of Henderson Legal Services. I am the</p> <p>17 legal video specialist.</p> <p>18 The court reporter is Paula Satkin</p> <p>19 in association with Henderson Legal Services</p> <p>20 located at 1015 Fifteenth Street, Northwest,</p> <p>21 Washington, D.C.</p> <p>22 For the record, will counsel</p>

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Marshall, Gregory Dean

March 18, 2014

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 please introduce themselves.</p> <p>2 MR. STUEVE: Patrick Stueve of</p> <p>3 Stueve Siegel Hanson firm here on behalf of the</p> <p>4 Plaintiffs. Along with me is David Hickey.</p> <p>5 MR. MONICA: John Monica from</p> <p>6 Porter Wright representing Rose Acre Farms, Inc.</p> <p>7 With me is my colleague, Molly Crabtree, and</p> <p>8 also Rose Acre's general counsel, Joe Miller.</p> <p>9 Is anyone on the phone? Hearing</p> <p>10 no one I'm going to hang up. Is that okay,</p> <p>11 counsel?</p> <p>12 MR. STUEVE: Yes.</p> <p>13 THE VIDEOGRAPHER: Now will the</p> <p>14 court reporter please swear or affirm in the</p> <p>15 witness.</p> <p>16 Whereupon --</p> <p>17</p> <p>18 GREGORY DEAN MARSHALL</p> <p>19 a witness, called for examination, having been</p> <p>20 first duly sworn, was examined and testified as</p> <p>21 follows:</p> <p>22 EXAMINATION BY COUNSEL FOR PLAINTIFF</p>	<p style="text-align: right;">8</p> <p>1 financial records of Rose Acre?</p> <p>2 A. Prepare or oversee those who do</p> <p>3 prepare.</p> <p>4 Q. Okay. And what is your title?</p> <p>5 A. CFO.</p> <p>6 Q. How long have you held that</p> <p>7 position?</p> <p>8 A. Approximately five years.</p> <p>9 Q. Prior to that did you have a</p> <p>10 position with Rose Acre?</p> <p>11 A. Yes. I did. It was senior</p> <p>12 financial analyst.</p> <p>13 Q. Okay. How long did you hold that</p> <p>14 position?</p> <p>15 A. About 15 years.</p> <p>16 Q. Okay. And when did you join Rose</p> <p>17 Acre?</p> <p>18 A. January of 1995.</p> <p>19 Q. Okay. So did you have any other</p> <p>20 positions other than the two that you identified</p> <p>21 while you've been at Rose Acre?</p> <p>22 A. No.</p>
<p style="text-align: right;">7</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Mr. Marshall, my name is Patrick</p> <p>3 Stueve. I met you for the first time just</p> <p>4 before this deposition; is that right, sir?</p> <p>5 A. Correct.</p> <p>6 Q. Can you state your full name for</p> <p>7 the record and where you reside?</p> <p>8 A. Gregory Dean Marshall in Seymour,</p> <p>9 Indiana.</p> <p>10 Q. And that's the location of the</p> <p>11 headquarters of Rose Acre; is that correct, sir?</p> <p>12 A. That's correct.</p> <p>13 Q. The purpose of this deposition is</p> <p>14 it to ask you questions about topic 29 in</p> <p>15 Exhibit 517. Do you have topic 29 in front of</p> <p>16 you?</p> <p>17 A. Yes. I do.</p> <p>18 Q. Okay. What did you do to prepare</p> <p>19 to respond to topic 29?</p> <p>20 A. I met with counsel and also as</p> <p>21 part of my job, I live it every day.</p> <p>22 Q. Is it your job to prepare the</p>	<p style="text-align: right;">9</p> <p>1 Q. Okay. Were you responsible for</p> <p>2 collecting the financial documents that have</p> <p>3 been provided to counsel that have been produced</p> <p>4 to us in this case?</p> <p>5 A. Yes.</p> <p>6 Q. And can you tell me the categories</p> <p>7 of financial documents that you collected?</p> <p>8 A. Financial statements that are</p> <p>9 prepared on a monthly basis and then also our</p> <p>10 daily production records, as we call them.</p> <p>11 Q. Did you collect and produce any</p> <p>12 audited financial statements?</p> <p>13 A. Yes.</p> <p>14 Q. And any others?</p> <p>15 A. I don't believe so. No.</p> <p>16 Q. Okay. Let me show you what's been</p> <p>17 previously marked as 596.</p> <p>18 (Exhibit Number 596 was previously</p> <p>19 marked for identification.)</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. If you look over on RA, the Bates</p> <p>22 range numbers down here, and the last two digits</p>

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Marshall, Gregory Dean

March 18, 2014

4 (Pages 10 to 13)

<p>10</p> <p>1 is 92, so it's the second page in.</p> <p>2 A. Okay.</p> <p>3 Q. Did you prepare this document?</p> <p>4 A. Yes.</p> <p>5 Q. And what was the purpose of your</p> <p>6 preparation of this document?</p> <p>7 A. 92?</p> <p>8 Q. Yes.</p> <p>9 A. It looks like a comparison of the</p> <p>10 individual layer farms as part of our layer farm</p> <p>11 budget summary.</p> <p>12 Q. And would you prepare this on an</p> <p>13 annual basis?</p> <p>14 A. No.</p> <p>15 Q. Why did you prepare this in August</p> <p>16 of 2006?</p> <p>17 A. I'm not sure I can answer that.</p> <p>18 Q. Okay. The -- if you would, there</p> <p>19 is on page 93, what is the -- what are you</p> <p>20 comparing here, sir?</p> <p>21 A. Looks like various production</p> <p>22 records for a given period, cage space</p>	<p>12</p> <p>1 information?</p> <p>2 A. On the income statement.</p> <p>3 Q. Okay. And it shows that the</p> <p>4 average per dozen ranged from \$0.61 -- excuse</p> <p>5 me. \$0.63 in '97 to a low of \$0.47 in '95; is</p> <p>6 that right?</p> <p>7 A. Correct.</p> <p>8 Q. Now, the average price per dozen</p> <p>9 grew significantly in the 2000s; did it not?</p> <p>10 MR. MONICA: Objection.</p> <p>11 THE WITNESS: Yes. It did.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Okay. And do you know what the</p> <p>14 high has been?</p> <p>15 A. I do not know off the top of my</p> <p>16 head.</p> <p>17 Q. It would be over a dollar per</p> <p>18 dozen; would it not?</p> <p>19 A. Yes. That being said, I would</p> <p>20 also like to add that expenses went up</p> <p>21 significantly in the 2000s, as well, with grain</p> <p>22 prices.</p>
<p>11</p> <p>1 utilization, number of layers, dozens produced.</p> <p>2 Q. And is this a document that you</p> <p>3 would keep updating on an annual basis?</p> <p>4 A. I don't believe so. No.</p> <p>5 Q. Was it prepared specifically for</p> <p>6 the Rose Acre Farm, Inc. layer farm budget</p> <p>7 summary, fiscal 2001 to 2006?</p> <p>8 A. Yes.</p> <p>9 Q. Have you prepared similar analysis</p> <p>10 since August of 2006?</p> <p>11 A. No.</p> <p>12 Q. If you look down at the middle of</p> <p>13 the page it says dozens sold. It says average</p> <p>14 per dozen. Was that the average price per dozen</p> <p>15 for fiscal year 1993 through '98?</p> <p>16 A. Yes.</p> <p>17 Q. And where would you have collected</p> <p>18 that data from?</p> <p>19 A. It would have been collected from</p> <p>20 our internal financial statements.</p> <p>21 Q. And where from your internal</p> <p>22 financial statements would you have located that</p>	<p>13</p> <p>1 Q. Let me show you this next</p> <p>2 document.</p> <p>3 (Exhibit Number 597 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. 597. It is Bates range RAFKS</p> <p>7 0009762. Do you remember preparing Exhibit 597?</p> <p>8 A. Yes.</p> <p>9 Q. And why were you providing this</p> <p>10 information to Steve Paul?</p> <p>11 A. We provided this information to</p> <p>12 Mr. Paul because we were looking at going</p> <p>13 together with two or three other partners in an</p> <p>14 effort to do a business combination leaning</p> <p>15 toward the public markets.</p> <p>16 Q. And can you tell me about that</p> <p>17 business combination, sir?</p> <p>18 A. It was a discussion that was had</p> <p>19 with various parties and essentially fell apart</p> <p>20 due to various Boards of the individual</p> <p>21 companies deciding not to go forward with it.</p> <p>22 Q. When were those discussions held?</p>

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Marshall, Gregory Dean

March 18, 2014

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 A. It would have been sometime in the 2 2010/2011 range. 3 Q. And did you prepare any other 4 financial analysis other than Exhibit 597 as a 5 part of that process? 6 A. Yes. I did. 7 Q. What did you prepare? 8 A. Several financial analysis looking 9 at the various business combination 10 possibilities, accumulations. 11 Q. Did you -- did you in there 12 discuss the profitability for financial 13 performance of Rose Acre? 14 A. No. 15 Q. Would the financial performance of 16 Rose Acre been reflected in any of your 17 analyses? 18 A. Yes. 19 Q. How would you have reflected 20 those? 21 A. Essentially they were just 22 business -- they were accumulations of the</p>	<p style="text-align: right;">16</p> <p>1 A. Yes. 2 Q. Okay. You state in here that 3 fiscal 2008, 2009 and 2010 all had high average 4 egg markets and profitability throughout the 5 industry was expected. Do you see that? 6 A. Uh-huh. 7 Q. When you say that profitability 8 throughout the industry was expected, what did 9 you mean by that, Mr. Marshall? 10 A. I think I was probably just 11 referring to the fact that there were high egg 12 markets. 13 Q. When you mean high egg markets, 14 you're talking about high Urner Barry prices; is 15 that correct? 16 A. Prices. Correct. 17 Q. And then you say, however, when I 18 look at the Mason Dixon financial statements RAF 19 makes up 60.7 percent of combined net income for 20 2008. Do you see that? 21 A. Yes. 22 Q. Is that in comparison to one of</p>
<p style="text-align: right;">15</p> <p>1 various businesses and what the combined totals 2 would look like. 3 Q. So as a result -- as a part of 4 that you would have had to have included the 5 financial performance of Rose Acre? 6 A. Yes. 7 Q. What years did you use? 8 A. I don't know off the top of my 9 head. 10 Q. Was it multiple years or? 11 A. It was probably two years. 12 Q. Okay. What was the name of the 13 document that you prepared? 14 A. I don't remember off the top of my 15 head. 16 Q. Okay. Who did you provide it to? 17 A. It was an internal document that 18 was provided to probably Marcus Rust. 19 Q. Have you provided that to counsel 20 for Rose Acre in this case? 21 A. No. 22 Q. Does it still exist?</p>	<p style="text-align: right;">17</p> <p>1 the other partners? 2 A. I believe that would be 3 comparative to all the other partners combined. 4 Q. Okay. 5 (Exhibit Number 598 was marked for 6 identification.) 7 BY MR. STUEVE: 8 Q. Let me show you -- let me ask you 9 this, referring back to 597, what has been the 10 profitability of Rose Acre in 2011 and 2012? 11 A. 2011 we lost about \$4.5 million. 12 2012 I believe we lost right around \$16 million. 13 Q. And is that the result in part on 14 lower Urner Barry market prices? 15 A. More so on the expense side and 16 higher input costs with grain. 17 Q. But have there also been lower 18 Urner Barry market prices in 2011 and 2012? 19 A. Actually, the markets have been 20 very high. 21 Q. They have been? 22 A. Yes.</p>

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Marshall, Gregory Dean

March 18, 2014

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 Q. So when you say very high, what do 2 you mean by that, that range? 3 A. I don't know top of my head, but I 4 believe in 2012 the market averaged somewhere 5 around \$1.25, \$1.30. 6 Q. What about 2011? 7 A. Right around the same area. 8 Q. Now, let me show you what's been 9 marked as 598. 10 This is Bates range -- I don't 11 need to do that, there's nobody else on. Good. 12 This is the consolidated financial 13 statement and supporting schedules December '99. 14 Do you see that? 15 A. Yes. 16 Q. And then what we've done -- I 17 would go ahead and mark all the rest of them. 18 In this consolidated financials, 19 would this be where you would look to if you 20 wanted to determine the profitability of Rose 21 Acre for the calendar year December 1999 -- 22 excuse me. The calendar year 1999?</p>	<p style="text-align: right;">20</p> <p>1 present? 2 A. Yes. 3 Q. Okay. Any other document you 4 would look to to determine the fiscal year 5 financial profitability other than the 6 consolidated financial statement and supporting 7 schedules? 8 A. No. 9 Q. So the -- just to be clear. So 10 the -- your fiscal year has always ended at the 11 end of June of each year? 12 A. Actually, it ends on the last 13 Thursday of June each year. 14 Q. Okay. So on those consolidated 15 financials, if we look to June, for example, 16 this year -- if we look to June of 2000, would 17 that give us the fiscal year summary that we're 18 looking for as far as profitability? 19 A. Yes. 20 Q. All right. Do you have anything 21 else to offer as far as where the profitability 22 under topic 29, annual profitability financial</p>
<p style="text-align: right;">19</p> <p>1 A. No, because we're not a calendar 2 year company. 3 Q. Okay. So this is the consolidated 4 financial statement and supporting schedule 5 December '99. Do you see that? 6 A. Yes. 7 Q. So this does not reflect the last 8 12 months performance? 9 A. No. This would be six months. 10 Q. Okay. So where would you look to 11 determine the profitability of Rose Acre for the 12 last 12 months? 13 A. The last 12 months? 14 Q. Yeah. So when -- at your year 15 end, using your calendar year? 16 A. Yes. 17 Q. What financial statement would you 18 look at to determine whether or not for that 19 fiscal year you had a profit or loss? 20 A. It would be the June statement. 21 Q. Okay. And would that be true for 22 every year starting in 1999 up through the</p>	<p style="text-align: right;">21</p> <p>1 performance, do you have anything else to add as 2 far as where the information concerning that 3 would be found other than what you just 4 testified to? 5 A. No. 6 MR. STUEVE: I have no further 7 questions. 8 MR. MONICA: Okay. I have none. 9 MR. STUEVE: Okay. 10 MR. MONICA: Off the record. 11 THE VIDEOGRAPHER: This concludes 12 the videotaped deposition of Mr. Greg Marshall 13 on behalf of Rose Acre Farms, Incorporated. 14 There's a total of one volume consisting of one 15 media unit. The time is 4:45 p.m. and we are 16 going off the record. 17 (Signature not waived.) 18 (Whereupon, at 4:45 p.m., the 19 deposition was concluded.) 20 - - - - - 21 22</p>

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Marshall, Gregory Dean

March 18, 2014

7 (Pages 22 to 23)

<div style="text-align: right; margin-bottom: 10px;">22</div> <div style="text-align: center; margin-bottom: 10px;">ACKNOWLEDGMENT OF DEPONENT</div> <div style="margin-bottom: 10px;">I do hereby acknowledge that I have read and examined the foregoing of the transcript of my deposition and that:</div> <div style="margin-bottom: 10px;">(Check appropriate box):</div> <div style="margin-bottom: 10px;">() the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.</div> <div style="margin-bottom: 10px;">() except for the changes noted in the attached errata sheet, the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.</div> <div style="display: flex; justify-content: space-between; border-top: 1px solid black; margin-top: 20px;"><div style="width: 45%;">DATE</div><div style="width: 45%;">SIGNATURE</div></div>	<div style="text-align: right; margin-bottom: 10px;">23</div> <div style="text-align: center; margin-bottom: 10px;">CERTIFICATE OF NOTARY PUBLIC</div> <div style="margin-bottom: 10px;">I, Paula G. Satkin, the officer before whom the foregoing proceedings were taken, do hereby certify that the witness whose testimony appears in the foregoing proceeding was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said proceedings is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.</div> <div style="margin-bottom: 10px;">My commission expires November 14, 2015.</div> <div style="display: flex; justify-content: center; border-top: 1px solid black; margin-top: 20px;"><div style="text-align: center; width: 60%;">PAULA G. SATKIN Notary Public in and for the District of Columbia</div></div>
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Marshall, Gregory Dean

March 18, 2014

1

A	22:7	cage 10:22	concluded 21:19	5:8
\$0.47 12:5	approximately	calendar 18:21	concludes 21:11	DEPONENT
\$0.61 12:4	5:14 8:8	18:22 19:1,15	CONFIDENT...	22:1
\$0.63 12:5	area 18:7	call 9:10	1:10	deposition 1:15
\$1.25 18:5	Arthur 2:14	called 6:19	consisting 21:14	5:3,11 7:4,13
\$1.30 18:5	5:12	case 1:7 5:9 9:4	consolidated	21:12,19 22:5
\$16 17:12	Associated 1:5	15:20	4:12 18:12,18	determine 18:20
\$4.5 17:11	5:5	categories 9:6	19:3 20:6,14	19:11,18 20:4
a.m 1:17	association 5:19	CERTIFICA...	Cont'd 3:1	digits 9:22
accumulations	attached 22:14	23:1	convened 1:16	direction 23:8
14:10,22	attorney 23:14	certify 23:4	correct 7:5,11	discuss 14:12
acknowledge	audited 9:12	CFO 8:5	7:12 12:7	discussion 13:18
22:3	August 10:15	changes 22:13	16:15,16 22:9	discussions
ACKNOWLEDGE...	11:10	Check 22:7	22:15	13:22
22:1	average 11:13	City 2:8	costs 17:16	District 1:1,3
Acre 2:11 3:5	11:14 12:4,8	clear 20:9	counsel 3:5 5:22	5:8,9 23:22
5:4 6:6 7:11	16:3	colleague 6:7	6:8,11,22 7:20	Dixon 16:18
8:1,10,17,21	averaged 18:4	collect 9:11	9:3 15:19	document 4:10
11:6 14:13,16	B	collected 9:7	23:10,14	10:3,6 11:2
15:5,20 17:10	B 4:7	11:17,19	County 1:1 5:9	13:2 15:13,17
18:21 19:11	back 17:9	collecting 9:2	court 1:1 5:8,18	20:3
21:13	Barry 16:14	Columbia 23:22	6:14	documents 9:2,7
Acre's 6:8	17:14,18	combination	Crabtree 2:13	dollar 12:17
action 23:12,17	basis 9:9 10:13	13:14,17 14:9	6:7	dozen 11:14,14
add 12:20 21:1	11:3	combined 15:1	D	12:4,8,18
affirm 6:14	Bates 4:10 9:21	16:19 17:3	D 5:1	dozens 11:1,13
ahead 18:17	13:6 18:10	commencing	D.C 1:13,19	due 13:20
al 1:6,9 5:6,7	behalf 2:3,11	1:17	5:13,21	duly 6:20 23:5
analyses 14:17	5:4 6:3 21:13	commission	daily 9:10	E
analysis 11:9	believe 9:15	23:18	data 11:18	E 3:1,1 4:1,7 5:1
14:4,8	11:4 17:2,12	companies	DATE 22:22	5:1
analyst 8:12	18:4	13:21	David 2:5 6:4	effort 13:14
annual 10:13	Boards 13:20	company 19:2	day 7:21	egg 1:9 5:7 16:4
11:3 20:22	box 22:7	comparative	DC 2:17	16:11,13
answer 10:17	budget 10:11	17:3	Dean 1:15 6:18	employed 23:11
answers 22:10	11:6	comparing	7:8	23:15
22:16	business 13:14	10:20	Decanio 5:15	employee 23:14
apart 13:19	13:17 14:9,22	comparison	December 18:13	ended 20:10
APPEARAN...	businesses 15:1	10:9 16:22	18:21 19:5	ends 20:12
2:1	C	complete 22:10	deciding 13:21	errata 22:14
appears 23:4	C 2:12 3:1 5:1	22:15	Defendants 1:10	ESQ 2:4,5,12,13
appropriate		concerning 21:2		

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Marshall, Gregory Dean

March 18, 2014

2

essentially 13:19 14:21 et 1:6,9 5:6,7 examination 6:19,22 examined 6:20 22:4 example 20:15 excuse 12:4 18:22 Exhibit 4:8,9,10 4:12 7:15 9:18 13:3,7 14:4 17:5 exist 15:22 expected 16:5,8 expense 17:15 expenses 12:20 expires 23:18 <hr/> F <hr/> fact 16:11 far 20:18,21 21:2 farm 10:10 11:6 11:6 farms 2:11 3:5 5:4 6:6 10:10 21:13 fell 13:19 Fifteenth 5:20 financial 4:12 8:1,12 9:2,7,8 9:12 11:20,22 14:4,8,12,15 15:5 16:18 18:12 19:4,17 20:5,6,22 financially 23:15 financials 18:18 20:15	firm 5:16 6:3 first 6:20 7:3 fiscal 11:7,15 16:3 19:19 20:4,10,17 five 8:8 follows 6:21 foregoing 22:4 23:3,5 forward 13:21 found 21:3 front 7:15 full 7:6 further 21:6 23:13 <hr/> G <hr/> G 1:19 5:1 23:2 23:20 general 3:5 6:8 give 20:17 given 10:22 22:10,16 23:10 go 13:21 18:17 going 6:10 13:12 21:16 Good 18:11 grain 12:21 17:16 Greg 5:4 21:12 Gregory 1:15 6:18 7:8 grew 12:9 Grocers 1:5 5:6 <hr/> H <hr/> H 4:7 hang 6:10 Hanson 2:6 6:3 head 12:16 15:9 15:15 18:3 headquarters 7:11	Hearing 6:9 held 5:11 8:6 13:22 Henderson 5:16 5:19 hereto 23:15 Hickey 2:5 6:4 high 12:14 16:3 16:11,13,14 17:20 18:1 higher 17:16 HIGHLY 1:9 hold 8:13 <hr/> I <hr/> identification 9:19 13:4 17:6 identified 8:20 included 15:4 income 12:2 16:19 Incorporated 5:5,6 21:13 Indiana 7:9 individual 10:10 13:20 industry 16:5,8 information 12:1 13:10,11 21:2 input 17:16 interested 23:16 internal 11:20 11:21 15:17 introduce 6:1 <hr/> J <hr/> J 2:4 January 8:18 job 7:21,22 Joe 6:8 John 2:12 6:5 join 8:16	JOSEPH 3:4 JR 2:12 Judicial 1:3 5:9 June 19:20 20:11,13,15,16 <hr/> K <hr/> K 1:18 2:15 5:13 Kansas 1:2 2:8 5:9 keep 11:3 know 12:13,15 15:8 18:3 <hr/> L <hr/> layer 10:10,10 11:6 layers 11:1 leaning 13:14 legal 5:16,17,19 live 7:21 LLP 2:6,14 5:12 located 5:12,20 11:22 location 7:10 long 8:6,13 look 9:21 11:12 15:2 16:18 18:19 19:10,18 20:4,15,16 looking 13:12 14:8 20:18 looks 10:9,21 loss 19:19 lost 17:11,12 low 12:5 lower 17:14,17 <hr/> M <hr/> M 4:1 March 1:14,16 5:14 Marcus 15:18	mark 18:17 marked 4:9 9:17 9:19 13:3 17:5 18:9 market 17:14,18 18:4 markets 13:15 16:4,12,13 17:19 Marshall 1:16 5:4 6:18 7:2,8 16:9 21:12 Mason 16:18 matter 5:5 mean 16:9,13 18:2 media 5:2 21:15 met 7:3,20 middle 11:12 Miller 3:4 6:8 million 17:11,12 Missouri 2:8 Molly 2:13 6:7 Monica 2:12 6:5 6:5 12:10 21:8 21:10 monthly 9:9 months 19:8,9 19:12,13 Morris 2:14 5:12 multiple 15:10 <hr/> N <hr/> N 3:1 4:1,1 5:1 name 5:15 7:2,6 15:12 need 18:11 neither 23:10 net 16:19 Nichols 2:7 Northwest 1:18
---	---	--	--	---

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202-220-4158

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HIGHLY CONFIDENTIAL

Marshall, Gregory Dean

March 18, 2014

3

5:13,20 Notary 1:20 23:1,21 noted 22:13 November 23:18 number 5:3,10 9:18 11:1 13:3 17:5 numbers 9:22 NW 2:15	7:2 Paul 13:10,12 Paula 1:19 5:18 23:2,20 percent 16:19 performance 14:13,15 15:5 19:8 21:1 period 10:22 phone 6:9 PLAINTIFF 6:22 Plaintiffs 1:7 2:3 5:7 6:4 please 6:1,14 Porter 1:18 2:14 5:12 6:6 position 8:7,10 8:14 positions 8:20 possibilities 14:10 preparation 10:6 prepare 7:18,22 8:2,3 10:3,12 10:15 14:3,7 prepared 9:9 11:5,9 15:13 preparing 13:7 present 3:3 20:1 previously 4:9 9:17,18 price 11:14 12:8 prices 12:22 16:14,16 17:14 17:18 Prior 8:9 probably 15:11 15:18 16:10 proceeding 23:5 proceedings	23:3,9,12 process 14:5 produce 9:11 produced 9:3 11:1 Producers 1:9 5:7 production 9:10 10:21 Professional 1:20 profit 19:19 profitability 14:12 16:4,7 17:10 18:20 19:11 20:5,18 20:21,22 provide 15:16 provided 9:3 13:11 15:18,19 providing 13:9 public 1:21 13:15 23:1,21 purpose 7:13 10:5	22:17 records 8:1 9:10 10:22 reduced 23:7 referring 16:11 17:9 reflect 19:7 reflected 14:16 14:19 Registered 1:20 related 23:11 relative 23:14 remember 13:7 15:14 reporter 1:20 5:18 6:14 representing 6:6 reside 7:7 respond 7:19 responsible 9:1 rest 18:17 result 15:3 17:13 right 7:4 12:6 17:12 18:7 20:20 Road 2:7 Rose 2:11 3:5 5:4 6:6,8 7:11 8:1,10,16,21 11:6 14:13,16 15:5,20 17:10 18:20 19:11 21:13 Rust 15:18	schedules 18:13 20:7 second 10:1 see 16:5,20 18:14 19:5 senior 8:11 Services 5:16,19 Seymour 7:8 sheet 22:14 show 9:16 13:1 17:8 18:8 shows 12:3 side 17:15 Siegel 2:6 6:3 Signature 21:17 22:22 significantly 12:9,21 similar 11:9 sir 7:4,11 10:20 13:17 six 19:9 sold 11:13 space 10:22 specialist 5:17 specifically 11:5 stamped 4:10 starting 19:22 state 7:6 16:2 statement 4:12 12:2 18:13 19:4,17,20 20:6 statements 9:8 9:12 11:20,22 16:18 stenotype 23:7 Steve 5:15 13:10 Street 1:18 2:15 5:13,20 Stueve 2:4,6 4:2 6:2,2,3,12 7:1
<hr/> O <hr/> O 4:1 5:1 Objection 12:10 offer 20:21 officer 23:2 offices 1:17 okay 6:10 7:18 8:4,13,16,19 9:1,16 10:2,18 12:3,13 15:12 15:16 16:2 17:4 19:3,10 19:21 20:3,14 21:8,9 outcome 23:16 oversee 8:2				
<hr/> P <hr/> P 3:1,1 5:1 p.m 5:14 21:15 21:18 page 4:8 10:1,19 11:13 part 7:21 10:10 14:5 15:3 17:13 parties 13:19 23:12,15 partners 13:13 17:1,3 Patrick 2:4 6:2				
		<hr/> Q <hr/> questions 7:14 21:7 22:11,16		
		<hr/> R <hr/> R 3:1 5:1 RA 9:21 RAF 16:18 RAFKS 4:11 13:6 range 9:22 13:6 14:2 18:2,10 ranged 12:4 read 22:3 record 5:22 7:7 21:10,16 23:9 recorded 22:11		
			<hr/> S <hr/> S 3:1 4:7 5:1 Satkin 1:19 5:18 23:2,20 says 11:13,13 schedule 19:4	

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202-220-4158

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HIGHLY CONFIDENTIAL

Marshall, Gregory Dean

March 18, 2014

4

7:3 9:20 12:12 13:5 17:7 21:6 21:9 Suite 2:7,16 summary 10:11 11:7 20:17 supporting 18:13 19:4 20:6 sure 10:17 swear 6:14 sworn 6:20 23:5	13:13 15:11 typewriting 23:8	23:10 Wright 1:18 2:14 5:12 6:6	200 2:7 2000 20:16 20006 2:17 2000s 12:9,21 2001 11:7 2006 10:16 11:7 11:10 2008 16:3,20 2009 16:3 2010 16:3 2010/2011 14:2 2011 17:10,11 17:18 18:6 2012 17:10,12 17:18 18:4 2014 1:14,17 5:14 2015 23:18 202 2:18 29 7:14,15,19 20:22 29th 5:9	7 7 4:2 714-7100 2:9 778-3000 2:18
T T 4:1,7 taken 23:3,6,13 talking 16:14 tell 9:6 13:16 testified 6:20 21:4 testimony 23:4 23:6,9 think 16:10 three 13:13 Thursday 20:13 time 7:3 21:15 title 8:4 top 12:15 15:8 15:14 18:3 topic 7:14,15,19 20:22 total 21:14 totals 15:1 transcript 22:4 transcription 22:10,15 true 19:21 22:9 22:14 23:9 Tuesday 1:16 TWENTY-NI... 1:3 two 8:20 9:22	U Uh-huh 16:6 unit 5:3 21:15 United 1:9 5:7 updating 11:3 Urner 16:14 17:14,18 use 15:7 utilization 11:1	X X 4:1,7 Y Yeah 19:14 year 11:15 18:21,22 19:2 19:14,15,19,22 20:4,10,11,13 20:16,17 years 8:8,15 15:7,10,11	3 4 4:27 1:17 4:28 5:14 4:45 21:15,18 460 2:7	8 816 2:9
V V 1:8 various 10:21 13:19,20 14:9 15:1 versus 5:7 video 5:17 VIDEOGRAP... 5:2 6:13 21:11 videotaped 5:3 21:12 volume 1:12 21:14	W waived 21:17 wanted 18:20 Washington 1:13,19 2:17 5:13,21 Wayndotte 1:1 5:8 we're 19:1 20:17 we've 18:16 went 12:20 Wholesale 1:5 5:6 witness 6:15,19 12:11 23:4,6	Z 0 0009762 4:11 13:7 1 1015 5:20 10CV2171 1:8 5:10 1110 2:16 12 19:8,12,13 12/99 4:13 13 4:10 14 23:18 15 8:15 17 4:12 18 1:14,16 5:14 1900 1:18 2:15 5:13 1993 11:15 1995 8:18 1999 18:21,22 19:22 2	5 517 7:15 596 4:9 9:17,18 597 4:10 13:3,6 13:7 14:4 17:9 598 4:12 17:5 18:9 6 60.7 16:19 64112 2:8	9 9 4:9 92 10:1,7 93 10:19 95 12:5 97 12:5 98 11:15 99 18:13 19:5

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